IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 759 of 2007

In

Notice of Motion NO.1995 of 2007

Monocast Engg. Services and Anr.. Appellants

V/s

Golden Heights B Co Op

Hsg Scy Ltd. and Ors. ..Respondents

Shri H.S.S.Murthy i/b M.A.Narvekar for the Appellants

Shri Anil C. Singh i/b Shri D.R.Shah for the

Respondent no.1

CORAM:S.R.SATHE,J.

DATED:18th Oct. 2007

P.C.:-

1. Heard both the learned Advocates at length.

2. Perused the order. From the submission made before me it is very clear that there was no need for the plaintiffs to put the boards as alleged by the defendants at several places. Instead, the plaintiffs can put up only one board at the entrance side of the property.

3. Admittedly, the suit is of the year 2001 and the same is now ready for final hearing. The dispute is mainly with regard to the basement portion. So, instead of interfering with the findings of the trial Judge with regard to the same, it is hereby directed that the the suit be disposed of on merits according to law within 4 months from today. The observations made by the learned trial Judge while disposing of Notice of Motion are obviously restricted to the said Notice of Motion and as such the learned Judge should dispose of the suit independently and irrespective of the observations made in order passed while disposing of Notice of Motion.

4. In order to know the correct position of the suit property and enable the Court to appreciate the facts pleaded by the parties it is necessary to appoint the Commissioner. Hence Shri D.H.Pawar, Advocate is appointed as a Court Commissioner. The Commissioner to visit the suite site and to find out its present position and in particular the condition of the basement, parking space and entrance place. The Commissioner to carry out the said work after issuing due notice to both the parties. The Commissioner is allowed to take photographs of the property if he feels it necessary. Expenses of the same are to be borne by the present appellant.

5. The Appellant is directed to deposit Rs.1,000/- as Commissioner’s fees for the time being.

6. The Commissioner to file his report in the trial Court on or before 12-11-2007.

7. A.O.is disposed of in the above terms.

8. Parties to act on authenticated copy of this order.

(S.R.SATHE,J.)